

RESOLUTION NO.

Resolution of the Planning Commission of the City of San José approving a Conditional Use Permit to use certain real property described herein for the purpose of off-sale of alcohol at an existing grocery store.

FILE NO. CP02-019/ABC02-004

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 11, 2002 an application (File No. CP02-019/ABC02-004) was filed for a Conditional Use Permit for the purpose of allowing off-sale of alcohol at an existing grocery store, on that certain real property (hereinafter referred to as "subject property"), situate in the CG General Commercial Zoning District, located at the southeast corner of S. Twentieth and E. Santa Clara Streets, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Supermercado Mexico, Full Service Grocery Store" dated April 11, 2002. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and is located within the General Plan-designated East Santa Clara Street Neighborhood Business District.
2. The site is located in the CG General Commercial Zoning District, which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer alcoholic beverages for sale for off-site consumption.
4. The applicant presented to the Planning Commission their intent to minimize the sale of single-serving containers of alcohol.
5. The applicant presented to the Planning Commission their intent to refrain for advertising alcohol through window advertisements.
6. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San José Municipal Code Section 20.80.900, which regulates off-sale of alcohol.
7. The site **is** located closer than 500 feet from any public or private school (preschool through high school).
8. The project is located within 300 feet of a neighborhood park.
9. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing over-concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
10. The site is not located in an existing Project Crackdown/Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
11. The City's Police service investigation information (including but not limited to site-specific neighborhood analysis of calls for service) indicates the proposal would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.
12. The site is located within 50 feet of property zoned and used for residential purposes.
13. Other off-sale establishments are located in the neighborhood business district, within 500 feet of the store.
14. The walking distance from store entry to nearest residence is less than 100 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use **will not contribute** to an excess concentration of establishments that sell alcoholic beverages in that the proposed use will sell alcoholic beverages as an incidental part of a full-service grocery.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use **will not adversely affect** proximate residential uses.
4. The proposed project **meets** the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
5. The proposal **meets** the test of public convenience and necessity required of the Liquor License Exception Permit process.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will not**:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for

recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption only.
7. **Conformance with the Requirements of the Department of Alcoholic Beverage Control (ABC).** The applicant shall obtain all necessary ABC Permits and shall operate in full conformance with all applicable requirements of the Department of Alcoholic Beverage Control.
8. **Limitations on Area of Alcohol Sales.** The sale of alcohol is intended to be incidental to the primary use of grocery sales. The area of alcohol sales shall not exceed 15 percent of the total shelf space and product display area within the retail store. No alcohol product display or storage shall occur outside of the retail tenant space.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on

construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

ADOPTED and issued this 9th day of June, 2004, by the following vote:

AYES: JAMES, LEVY, CAMPOS, DHILLON, PLATTEN, ZAMORA, ZITO

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

JED